IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION APPLICATION NO. 103 OF 2006

Govardhani Construction Co. .. Applicants

V/s

Maharashtra Industrial Development Corporation & Ors. .. Respondents

Mr.H. Toor i/b S.K. Legal Associates for the Applicants.

Mr.Prashant Chavan i/b Navdeep Vora & Associates for the Respondents.

CORAM : H.L. GOKHALE, ACG. CJ.

DATE : 19TH JANUARY 2007

P.C. :

1. Heard Mr.Toor for the Applicants and Mr.Chavan for the Respondents.

2. The Applicants seek appointment of an Arbitrator under section 11 of the Arbitration and Conciliation Act, 1996. This is with respect to the provision for arbitration as claimed by the Applicants and as existing under clause 31 of the Agreement between the parties. This clause 31 reads as follows:-

"**31. Decision of Superintending Engineer to be final**: Except where otherwise specified in the contract & subject to the powers delegated to him by MIDC under the Code rules then in force, the decision of the Suptd. Engineer of the circle for the time being shall be final, conclusive & binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs, drawings, instructions, herein before mentioned & as to the quality of workmanship, or materials used on the work or as to other question, claim, right, matter or thing whatsoever, if any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions, or otherwise, concerning the works or the execution, or failure to execute the same, whether arising during the process of work, or after the completion or abandonment thereof."

3. It is the case of the Applicants that an amount of about Rs.1.65 crore is outstanding for the works executed sometime around 1998 as also the additional work executed from time to time.

4. Mr.Chavan, learned counsel for the Respondents, points out that similar clauses came up for consideration before the Apex Court in a number of cases. Those reported judgments being (a) State of U.P. vs. Tipper Chand - (1980) 2 SCC 341, (b) State of Orissa vs. Damodar Das - (1996) 2 SCC 216, and (c) Bharat Bhushan Bansal vs. U.P. Small Industries Corporation Ltd. - AIR 1999 SC 899. All these clauses did not mention that any dispute could be referred to arbitration of the officer concerned nor did they spell out any duty on him to record evidence or hear both parties and decide the questions before him. In that view of the matter, the Apex Court took the view that intention was essentially to avoid the disputes rather than to decide them in a quasi-judicial manner and took the view that those clauses did not contemplate any arbitration. The law on this clause being very clear, it is not possible to grant the prayer that any Arbitrator, as claimed by the Applicants, be appointed. There is also a prayer that the mandate of named Arbitrator under the Contract, namely Respondent No.5, be terminated. That will again be outside the scope of the present proceedings inasmuch as once it is held that there is no arbitration clause, no such order could be passed. Petition is therefore rejected.

5. Mr.Toor, however, makes a request that since these claims are pending for a long time, the Respondents ought to examine them appropriately. We expect the Respondents to look into the representation when made though of course in accordance with law.

ACTING CHIEF JUSTICE